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| 10/764,190 | 01/23/2004 | Peter Fyler Lynch | 9495 | 8071 |

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| EXAMINER |
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QUINN, COLLEEN M

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| ART UNIT | PAPER NUMBER |
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3634

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12/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/764,190

Applicant(s)

LYNCH, PETER FYLER

Examiner

Colleen M. Quinn

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-13,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-13,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ingelson (US 2,747,959). Ingelson discloses a shelf display apparatus for storing packages on a shelf (column1, lines 15-19) comprising first and second vertical support members (unnumbered vertical *ends* of 2), each having a lower end (3,4) connectable to a shelf (C) in a first plane (figure 1), a top support member (unnumbered top *edge* of 2) rigidly connected directly between the two vertical support members, and in a plane parallel to the first plane (figures 1,3 & 4), wherein the top support member has a continuous non-linear curved portion (figure 4) extending substantially the entire length of the top support member, and there is a substantially solid wall (2) interdisposed between the two vertical support members for supporting the packages on the shelf.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingelson as applied to claims 1 and 4 above, and further in view of Heroy (US 3,669,278). Ingelson fails to disclose fastening mechanisms comprising u-shaped brackets insertable into a portion of a shelf.

However, Heroy teaches a shelf display apparatus comprising first and second vertical support members (vertical end members of 12 and 13), each support member having a lower end (15) to which fastening mechanisms (16) are attached, wherein the fastening mechanisms include a bottom plate (20) connectable to a shelf (10), the fastening mechanisms including u-shaped brackets (24) insertable to the shelf (figure 3), engaging members (26) insertable through receiving areas (11) providing a secure connection (column 1, lines 55-64) to a shelf configured to provide a display for product information (column 1, lines 5-6 and 53-55).

Therefore, it would have been obvious to one of ordinary skill in the art, to provide the shelf display apparatus of Ingelson with the fastening mechanisms taught by Heroy, in order to provide a more secure connection between the apparatus and the shelf.

Response to Arguments

Applicant's arguments filed October 3rd, 2007 have been fully considered but they are not persuasive. The applicant argues that the vertical ends of Ingelson are not connected solely to the proximal and distal ends of the top support member because the vertical surface extends along the shelf in-between. The examiner would like to remind the applicant that the applicant's claimed invention also includes a wall extending in-between the vertical ends, and connected to the top support member, meaning the proximal and distal ends of the applicant's top support member are not solely connected to the vertical support member ends as they are also connected to the wall. Additionally, the examiner would like to point out that in the above rejection only the *ends* of the panel are referenced as the vertical members and not the entire panel, and that the ends have the same continuous surface connection to the top member that the applicant is claiming since the applicants vertical members and top member are a continuous piece as well. The applicant also argues that the top surface of Ingelson is not "horizontal". However, as can be clearly seen in all of Ingelson's figures, the top curved surface of the wall extending between the divider ends is clearly a horizontal surface.

Lastly, the applicant argues that the prior art of Heroy fails to teach all of the limitations of the applicant's claims. The applicant is reminded that Heroy was not referenced for teaching all of the claimed limitations, but rather for teaching specific bracket features on a shelf divider; and when in combination with Ingelson the two references fully anticipate the applicant's claimed subject matter.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571)272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ
12/13/07



BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER